

ORIGINAL

C/M
D&F

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

DAVID DELUCIA, as Fund Administrator the
United Benefit Fund, ANDREW TALAMO, as
trustee of the United Benefit Fund, THOMAS D.
AMBROSIO, as trustee of the United Benefit Fund,
and THE UNITED BENEFIT FUND,

MEMORANDUM AND ORDER
Case No. 07-CV-3968 (FB) (JMA)

Plaintiffs,

-against-

K&E AUTO REPAIR,

Defendant.

Appearance:

For the Plaintiffs:

LIAM LOUIS CASTRO, ESQ.
Koehler & Isaacs LLP
61 Broadway, 25th Floor
New York, NY 10006

BLOCK, Senior District Judge:

Acting on a referral from the Court, Magistrate Judge Joan M. Azrack issued a Report and Recommendation ("R&R") on November 10, 2008 recommending that a default judgment of \$7,576.40 be entered in favor of plaintiff and against defendants. The R&R recited that "[a]ny objections to this report and recommendation must be filed with the Clerk of the Court . . . within ten (10) days of the date of entry of this report and recommendation," and that "[f]ailure to file objections within the specified time waives the right to appeal the District Court's order." R&R at 8. A copy of the R&R was sent by certified mail to defendant's last known address on January 7, 2009. To date, no objections

have been filed.

If clear notice has been given of the consequences of failure to object, and there are no objections, the Court may adopt the R&R without *de novo* review. See *Thomas v. Arn*, 474 U.S. 140, 149-50 (1985); *Mario v. P & C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002) ("Where parties receive clear notice of the consequences, failure timely to object to a magistrate's report and recommendation operates as a waiver of further judicial review of the magistrate's decision."). The Court will excuse the failure to object, however, and conduct *de novo* review if it appears that the magistrate judge may have committed plain error. See *Spence v. Superintendent, Great Meadow Corr. Facility*, 219 F.3d 162, 174 (2d Cir. 2000).

Since there is nothing in Magistrate Judge Azrack's thorough R&R that suggests plain error or, for that matter, any error, the Court adopts it without *de novo* review.

SO ORDERED.

s/FB

 FREDERIC BLOCK,
Senior United States District Judge

Brooklyn, New York
January 28, 2009